IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 34210 of 2005(V)

OS.286/2003 OF ADDL.MUNSIFF COURT, KOLLAM

PETITIONER:

HASSANARU PILLAI MUHAMMED ISMAIL,
KATTUVILA HOUSE, KAVALAYOOR DESOM,
MANAMPOOR VILLAGE, CHIRAYINKEEZHU.

BY ADV. SRI.M.BALAGOVINDAN,
SRI.SASITH PANICKER.

RESPONDENTS:

1. **RAMEEZA BEEVI, CHITHANYA,**
   NAGROOR CHERI, NAGROOR VILLAGE,
   CHIRAYINKEEZHU TALUK.
2. **KABEENA, CHITHANYA, NAGROOR CHERI,**
   NAGROOR VILLAGE, CHIRAYINKEEZHU TALUK.
3. **KHADEEJA UMMAL, OLIKKARA KAYALVARATHU**
   VEEDU, THEKKECHERI, THRIKKARAVU VILLAGE,
   KOLLAM.
4. **IBRAHIM KUTTY, OLIKKARA KAYALVARATHU**
   VEEDU, THEKKECHERI, THRIKKARUVA VILLAGE,
   KOLLAM.
5. **SHARAFFUDEEN, OLIKKARA**
   KAYALVARATHU VEEDU, THEKKECHERI, THRIKKARUVA
   VILLAGE, KOLLAM.

W.P.(C). NO.34210/2005:

6. SAFIYATH BEEVI, OLIKKARA
KAYALVARATHU VEEDU, THEKKECHERI, THRIKKARUVA
VILLAGE, KOLLAM.

BY ADV. SRI.K.SUBASH CHANDRA BOSE,
SRI.R.ANILKUMAR,
SRI.P.BANI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.34210/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE APPLICATION I.A. 4842/2004 IN O.S. 286/2003 PENDING BEFORE THE FIRST ADDL. MUNSIFF COURT, KOLLAM DT. 24/11/2004.

EXT.P.2: COPY OF THE PLAINT O.S. 286/2003 OF THE FIRST ADDL. MUNSIFF COURT, KOLLAM DT. 31/03/2003.

EXT.P.3: COPY OF THE JUDGEMENT IN A.S. 210/1987 OF THE THIRD ADDL. DISTRICT JUDGE, TVM, DT. 31/10/92.

EXT.P.4: COPY OF THE ORDER IN I.A. 4842/2004 IN O.S. 286/2003 OF THE FIRST ADDL. MUNSIFF COURT, KOLLAM DT. 16/08/2005.

//TRUE COPY//

prv.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.34210 of 2005

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Dated: 3rd July, 2007

JUDGMENT

The petitioner who filed I.A.No.4842/04 in O.S.No.286/03 on the files of the First Additional Munsiff's Court, Kollam is aggrieved by Ext.P4 order passed in that case refusing to implead him as additional 5th defendant in the suit.

2. Heard Mr.M.Balagovindan, learned counsel for the petitioner, Mr.J.S.Ajithkumar, learned counsel for respondents 1 and 2 and Mr.K.Subhash Chandra Bose, learned counsel for respondents 3, 4 and 6.

3. Strong reliance was placed by Mr.Balagovindan on Ext.P3 judgment of the District Court, Trivandrum in an appeal which was preferred by the deceased Shamsudeen whose legal heir the petitioner claims to be. I do not want to go into the merits of the matter since Ext.P3 was not before the learned Munsiff while the impugned order was passed. Under these circumstances, I set aside Ext.P4 and direct the learned Munsiff to reconsider I.A.No.4842/04 in the light of Ext.P3 and any other material which the petitioner may produce before the learned Munsiff to substantiate his claim that he is also a legal heir of deceased Shamsudeen. The petitioner is directed

to produce all materials establishing his claim before the learned Munsiff within one month of receiving copy of the judgment. The learned Munsiff is directed to take fresh decision on I.A.No.4842/04 at the earliest and at any rate within three months of receiving copy of the judgment.

The Writ Petition is allowed as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**